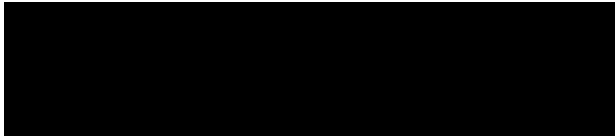
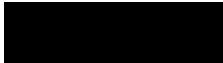




U.S. Citizenship
and Immigration
Services



FILE:



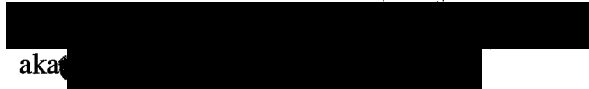
Office: CALIFORNIA SERVICE CENTER

Date:

OCT 26 2004

IN RE:

Applicant:



aka

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant was ineligible for TPS because he had been convicted of two misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant asserts that he was arrested only once and he pled guilty because the two charges were merged as one offense; therefore, they arose out of a single scheme of misconduct. He further asserts that the charges are being expunged.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the State as a misdemeanor, and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, the applicant was requested on August 21, 2003, to submit police clearances from every city he had lived since arriving in the United States, including a copy of the certified final court disposition of any arrests in the United States. He was advised that the final disposition should be obtained from the court where the hearing took place, not from the police station. The file contains no evidence that the applicant responded to the director's request. The FBI report reflects the following arrests and/or convictions:

1. Arrested on May 18, 1999, in San Jose, California, and subsequently convicted of (1) driving with .08 percent alcohol, in violation of 23152(b) VC, a misdemeanor; and (2) obstructing/resisting public officer, etc., in violation of 148(a) PC, a misdemeanor. The court's final disposition of these offenses is not contained in the record of proceeding.
2. Arrested on July 19, 1999, in San Jose, California, for (1) obstructing/resisting public officer, etc., and (2) driving with .08 percent alcohol. The court's final disposition of these offenses is not contained in the record of proceeding.
3. Arrested on November 17, 2000, in San Jose, California, for (1) resisting arrest, and (2) driving with .08 percent alcohol or higher. The court's final disposition of these offenses is not contained in the record of proceeding.
4. Arrested on December 23, 2000, in San Jose, California, for driving under the influence. The court's final disposition of this offense is not contained in the record of proceeding.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because he was convicted of two misdemeanor offenses (No. 1 above).

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the court's charging documents and final dispositions of the applicant's arrests to establish that he was in fact convicted of the crimes listed in the FBI report. Therefore, the finding of the director that the applicant was convicted of two misdemeanor offenses will be withdrawn.

The applicant, however, failed to comply to the director's request to submit police clearances from every city he had lived since arriving in the United States, including a copy of the certified final court disposition of his arrests in the United States. He is, therefore, ineligible for TPS based on his failure to comply to the director's request of August 21, 2003. The director's decision to deny the TPS application will be affirmed.

The burden of proof is upon the applicant to establish that he meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.